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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.				
10/774,769	02/09/2004	Charles E. Dinkler	OHM-182A	8827				
<div>7590      . 10/05/2007</div> <div>C. Richard Eby 2700 Carew Tower 441 Vine Street Cincinnati, OH 45202-2917</div>								
<div>EXAMINER</div> <div>EREZO, DARWIN P</div>								
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/774,769

Applicant(s)

DINKLER, CHARLES E.

Examiner

Darwin P. Erez

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 18-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 2/9/04, 7/9/04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group I in the reply filed on 7/18/07 is acknowledged.
2. Claims 18-24 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7/18/07.

### ***Information Disclosure Statement***

3. The information disclosure statements (IDS) submitted on 2/9/04 and 7/9/04 have been received and made of record. Note the acknowledged forms PTO-1449 enclosed herewith.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-16 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6,629,982 to Day et al.

Day discloses an apparatus capable of use with a radiolucent skull clamp supporting a head of a patient comprising: a skull pin assembly capable of being

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mounted on the skull clamp (via handle 52) comprising a skull pin **30**; a pin load applicator removably connectable to the skull pin assembly and comprising a loading shaft **56**, a biasing element **58** operable to apply a force on the loading shaft, and a load force indicator **72** connected to the loading shaft (Fig. 3) and providing an indication of the force being applied by the skull pin contacting the head of the patient, the pin load applicator being movable to adjust the force applied by the skull pin contacting the head of the patient, and thereafter, the pin load applicator being fully capable of being removable from the skull pin assembly without changing the force being applied by the skull pin contacting the head of the patient (loading shaft 56 and biasing element 58 can be removed from the device shown in Fig. 3 since the pin assembly can still be held by the handle 52); wherein the skull pin assembly is capable of being fixed linearly at a desired position with respect to the skull clamp (via the handle 52); wherein the skull pin assembly further comprises an engagement shaft **35**; wherein the pin load applicator is movable with respect to the skull clamp to bring the loading shaft in contact with the engagement shaft and to apply the force to the skull pin contacting the head of the patient; wherein the biasing element is a spring that applies a force against the loading shaft in a direction toward an interior of the skull clamp; wherein the handle 52 is an insert adapted to be mounted to the skull clamp, the insert receiving and supporting the skull pin assembly, wherein the engagement shaft is fully capable of being slidable but not rotatable with respect to the skull clamp (not positively recited), wherein the skull pin assembly further comprises a lock nut **33** that is capable of limiting movement of the skull pin assembly related to a skull clamp; wherein the engagement shaft comprises a

piston **35**; wherein the loading shaft has a plunger **57**; wherein the indicator is threaded via screw **64**.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Day et al.

Day discloses all the limitations of the claim except for the materials used to form the device. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have the skull pin be made of radiolucent material since the examiner takes Official notice that the use of radiolucent skull pins is well known in the art, especially since the skull clamps are also known to be radiolucent. It would also have been obvious to make the pin load applicator be made of non-radiolucent materials because it is not used as a reference point during imaging.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erezzo whose telephone number is (571) 272-4695. The examiner can normally be reached on M-F (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Darwin P. Erezzo/  
Examiner  
Art Unit 3731

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